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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,128	04/16/2004	Carl-Goran Hagert	HW-8645	7993
26294 7590 01/30/2008 TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 1300 EAST NINTH STREET, SUITE 1700 CLEVEVLAND, OH 44114			EXAMINER ARAJ, MICHAEL J	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 01/30/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/825,128	Applicant(s) HAGERT, CARL-GORAN	
	Examiner Michael J. Araj	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 and 13-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 and 13-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11, 14-18 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Weisenbach (U.S. Patent No. 1,789,060).

Weisenbach discloses a system comprising a chassis (12) and one or more fixation elements (8) in the form of screws or pins. The fixation elements are connected to the chassis by frictional engagement with the chassis caused by the tightening of the nut (26) to prevent axial, rotational and angular movement of the fixation element relative to the chassis. The fixation elements are to be received in a bone structure and are screwed into the chassis and bone structure in such a way that screws move equidistantly in the chassis and the bone structure to produce a force neutral form. There are also no axial forces transferred to the screws after fixation. The chassis is received in a rigid bracing wherein the chassis is made of two parts received displaceable in an axial direction in relation to each other in the bracing that cap is formed between the two chassis parts (12 and 15). This device is placed at a distance from and not in contact with the underlying bone structure or skin (see figure 1). The chassis is fixed to both sides of the fracture whereby a bridge span (26) is formed between bone fragments of the bone.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 19 and 23-29 are rejected, as understood, under 35 U.S.C. 103(a) as being unpatentable over Weisenbach (U.S. Patent No. 1,789,060).

Weisenbach discloses the claimed invention except for the chassis being made of ultra high molecular weight polyethylene or the bracing being made of steel or the fixation element being one piece. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have created the chassis with ultra high molecular weight polyethylene or the bracing rod of steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to the fixation element one piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Howard v. Detroit Stove Works, 150 U.S. 164 (1893).

Response to Arguments

Applicant's arguments with respect to claims 23-29 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed on October 31, 2007 have been fully considered but they are not persuasive. Applicant argues that Weisenbach does not teach frictional locking of the fixation elements given by means of the material of the chassis having an elasticity giving a locking effect by means of friction of the fixation elements. The chassis of Weisenbach has a certain elasticity. Because of this elasticity, it allows the fixation screws to be attached to the chassis with nuts which are secured by friction. If the chassis were as elastic as a rubber band then the device of Weisenbach would not be able to lock the screws by friction.

Applicant also argues that Weisenbach does not recite that the screws of the fixation elements are screwed into the chassis and bone structure in such a way that the screws move equidistantly in the chassis and the bone structure. The fixation element is screwed into the bone; the distance of the entry into the bone is the same distance as the fixation element into the chassis when the chassis is held at a constant distance from the body, which is why Weisenbach reads on claims 15 and 26.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

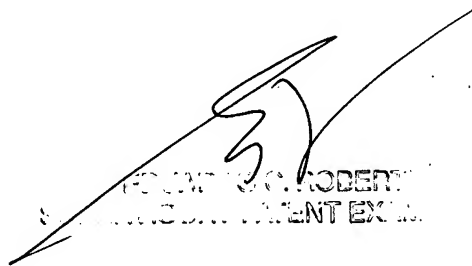
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MJA


ROBERT M. ROBERTS
PATENT ATTORNEY